IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 8093 of 1999
with
CIVIL APPLICATION NO. 1559 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANT NARANDAS MEHTA

Versus

HANSABEN KRISHNALAL

Appearance:
1. First Appeal No. 8093 of 1999
MR RA SEJPAL for the Appellant.
MR DILIP B RANA for Respondent No. 1
MR BALVANTRAY MEHTA for Respondent No. 1
BALKRISHNA ACHARYA for Respondent No. 1
MR HM PRACHCHHAK, AGP, for Respondents No.2 & 3.

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2004

ORAL JUDGEMENT

1. This First appeal arises out of a judgment and decree rendered by learned extra Assistant Judge, Jamnagar, on 15th December, 1999, in Civil Misc. Appeal

No.69 of 1998. The said appeal was preferred before the District Court, under Section 72 of the Bombay Public Trusts Act, against the order of the Joint Charity Commissioner in Appeal No.8 of 1997, dated 23rd July, 1998. The said appeal before the Joint Charity Commissioner arose out of an order made by Assistant Charity Commissioner in Change Report No.260 of 1995 on 29th April, 1997. The said Change Report No.260 of 1995 by Chandrakant (present appellant) before the Assistnat Charity Commissioner, Rajkot, for entering his name as a trustee came to be allowed by order dated 29th April, 1997.

1.1 Aggrieved by the said order, present respondent No.1, Hansaben, had preferred Appeal No.8 of 1997 before the Charity Commissioner and the Joint Charity Commissioner dismissed the appeal on 23rd July, 1998, confirming the findings of the Assistant Charity Commissioner, bringing Chandrakant as a trustee. Upon dismissal of the said appeal, present respondent preferred Civil Misc. Appeal No.69 of 1998, under Section 72, of the Bombay Public Trusts Act, before the District Court, at Rajkot, and the learned Extra Assistant Judge, allowed the said appeal and set aside the order made in Change Report No.260 of 1995 and, therefore, this appeal.

2. Learned Advocate, Mr. Sejpal, appearing for the appellant submitted that the trust has its antecedent in temples established by Devchandraji Maharaj, who had established two temples of Nijanandi Sampraday, one being "Chakada Mandir" and the other being " Raj alias Rajji Mandir". Mr. Sejpal submitted that these two temples are, now, two separately registered public charitable trusts. Chakada Mandir is registered vide Trust No.A/1135 of Jamnagar whereas Raj Mandir is registered vide Trust No.A/1163 of Jamnagar.

2.1 Mr. Sejpal submitted that Devchandraji was succeeded by Vihariji, who had no children and, therefore, he gave management of the two temples to his two nephews (sister's sons), Premanandji and Balchandraji and, from that time onwards, the two temples are being managed by the descendants in their respective lines. Mr. Sejpal submitted that the management of Raj Mandir was given to Balchandraji, who was succeeded by Naranji, Karsanji, Sunderlal, Chhaganlal, Jaikrishna and Amritlal. Amritlal Jaikrishna made an application before the Deputy Charity Commissioner, Rajkot, under Section 18 of the Bombay Public Trusts Act, for registering the trust as "Shri Raj alias Rajji Mandir and Dhani Shri Devchandraji

Maharaj Charan Paduka Mandir Trust". The said application was made on 7.8.1966. However, Amritlal Jaikrishna expired on 21st August, 1966, within a few days of filing such application. An order passed on 22nd July, 1968 by the Deputy Charity Commissioner, after holding an inquiry that it was a public religious trust and the trust was given No.A/1163 of Jamnagar. Deceased Amritlal's sister, Manekbai, was then managing Raj Mandir Trust till she expired on 13th August, 1969 and, thereafter, her daughter, Chandramaniben, continued to manage the trust, till she expired on 2nd May, 1995.

2.2 In the meantime, in May 1987, Chandramaniben had applied for changing the mode of appointment of trustees, by preferring Revision Application No.8 of 1987 and it was decided in 1992 that there was no trustee on record between 1969 and 1992. However, the Joint Charity Commissioner, in his order dated 20th October, 1992, held that the mode of succession be "lawful successor in the Shri Raj alias Rajji Mandir Branch of Shri Devchandraji Maharaj may become trustee and Poojari" and, thereafter, name of Chandramaniben was entered into by virtue of an order passed on 30th January, 1993, by the Assistant Charity Commissioner, Rajkot, in Change Report No.611 of 1992, under Section 22 of the Bombay Public Trusts Act. Chandramaniben continued to work as trustee, thereafter, till her death on 2nd May, 1995.

2.3 Present appellant, who happens to be son of Chandramaniben, filed Change Report No.260 of 1995, for entering his name as a trustee on the ground that he happens to be son of Chandramaniben, which came to be allowed by the Assistant Charity Commissioner, which was confirmed by the Joint Charity Commissioner in Appeal No.8 of 1997. Therefore, the present respondent preferred Civil Misc. Appeal before the District Court, which allowed the appeal.

2.4 According to Mr. Sejpal, the respondent did not challenge the order passed in the Change Report made earlier nor did the respondent ever claimed her right to be trustee till she filed Change Report No.202 of 1994, for entering her name as an additional trustee. Mr. Sejpal submitted that, even at that point of time also, the respondent never challenged the right of the appellant to be a trustee, but before the District Court, that right is challenged on the ground that the appellant is not in the line of direct descendants of Shri Devchandraji Maharaj and the trust and the temple are of Devchandraji Maharaj and, considering the mode of succession, the appellant cannot become a trust, which

has been erroneously accepted by the learned Assistant Judge while passing the impugned order. Mr. Sejpal submitted that there are two temples, namely, Chakada Mandir and Raj Mandir. The respondent falls in the line of descendants in the Chakada Mandir Trust. She herself is daughter of Karsanlal, who was the last trustee in the Chakada Mandir Trust, just as Chandramaniben was, and the appellant being son of Chandramaniben and there being no other claimant, his name ought to have been permitted to be continued as a trustee. Learned Assistant Judge overlooked the fact that while the order was passed in 1992, deciding mode of succession/appointment of trustees, it is specifically observed that trustee and Poojari can be appointed in the line of descendants of Raj alias Rajji Mandir Branch of Devchandraji Maharaj. The respondent falls within the other branch and not within the Raj alias Rajji Mandir Branch and she could not have been considered to have a right to become trustee. Mr. Sejpal submitted that the learned Assistant Judge also overlooked the fact that the respondent never claimed her right till 1994. It is only after the appointment of Chandramaniben that she filed a Change Report in 1994 for joining as a co-trustee. Even, at that point of time, she does not deny the right of Chandramaniben to become a trustee as descendant of Shri Devchandraji in the Ram Mandir Branch. Mr. Sejpal, therefore, submitted that an error is committed by the Lower Court in setting aside the order of the Joint Charity Commissioner in Appeal No. 8 of 1997 and Change Report No.260 of 1995, by the Assistant Charity Commissioner. Mr. Sejpal submitted that by setting aside this order, the appellant is deprived of his right to be a trustee, whereas he has been acting and looking after the trust, temple and properties for last sever years and, against that, the respondent has never cared for the temple and the trust till 1994. Even thereafter also, she is not in-charge of has ever cared to look after the property. He, therefore, submitted that this appeal may be allowed.

3. Learned Advocate, Mr. Mehta, appearing for respondent No.1, submitted that the appellant claims his right through his mother, Chandramaniben, who claimed her right through her mother, Manekbai, who was sister of Amritlal and daughter of Jaikrishna. According to Mr. Mehta, Chandramaniben cannot be considered as a person in direct line of decedents of Shri Devchandraji and, therefore, the order of the learned Assistant Judge is correct.

3.1 Mr. Mehta, while trying to explain the inaction

on the part of respondent No.1 till 1994, submitted that, till the order of Joint Charity Commissioner deciding mode of succession in 1992, even the respondent did not have right, being a lady. But, at that point of time, while deciding mode of succession, lady successor was also considered to be eligible for becoming trustee and, therefore, the respondent filed Change Report for joining as a trustee besides Chandramaniben. Mr. Mehta submitted that the position of the appellant and the respondent cannot be considered at par because the appellant is the son of Chandramaniben, who was herself a daughter of Manekbai, claiming through Amritlal Jaikrishna. Mr. Mehta submitted that it has come on record in inquiry that the appellant's father was not following the Nijanandi Sampraday and was not performing the rituals and, as such, the appellant could have been appointed as a trustee. The Change Report was allowed without making any inquiry and the learned Assistant Judge was, therefore, right in setting aside the order.

4. Learned Assistant Government Pleader, Mr. Prachchhak, appears for the Charity Commissioner and the Joint Charity Commissioner and supports the judgment of the learned Assistant Judge.

5. Having regard to the contentions raised before this Court, what emerges, undisputedly, is that by virtue of order passed on 20th October, 1992, the mode of succession is decided to be any person falling in the direct line of descendants in the Shri Raj alias Rajji Mandir Branch of Shri Devchandraji Maharaj. There is no dispute about the fact that Amritlal Jaikrishna was the last such male person in that branch and, on his demise, his sister, Manekbai, looked after the temple from 1968 till her demise and, thereafter, the temple trust was looked by Chandramaniben, daughter of Manekbai. It has to be observed that, as per the observations made by the Charity Commissioner in the year 1992, while deciding mode of succession, there was no trustee during the period from 1969 to 1992, but Manekbai and Chandramaniben were acting as trustees. Therefore, they were de facto trustees. It is also to be noted that there is no other claimant of Rajji Mandir even as on today. On the demise of Chandramaniben, present appellant filed Change Report for being appointed as trustee, which has been allowed and that order has not been challenged before any higher forum by anyone, including the respondent. It is also worth a note that Hansaben is the daughter of Karsanlal and, as such, falls at par with Manekbai. Hansaben herself is married and, as such, she no more remains in the Gotra of Shri Devchandraji Maharaj, just as Manekbai.

It is also not in dispute that Hansaben falls in the line of descendants of Chakada Mandir and, till 1994, she or her ancestors have never claimed any right over Raj Mandir Trust, whereas, all the time, the temple was looked after by either Manekbai or Chandramaniben. In this factual and undisputed background, the observation of the learned judge that before appointing the appellant as a trustee, no inquiry is made pales into insignificance because even if the inquiry was made, it would not have made any difference on factual aspect. The appellant has been looking after the temple and the trust. His appointment has not been challenged before higher forum nor is the mode of succession ever challenged after 1992 and the respondent also, while filing the Change Report, prays for being joined as a co-trustee and does not pray for removal of Chandramaniben, mother of the appellant, as a trustee ad the contention regarding the appellant not being in the line of descendants of Shri Devchandraji Maharaj is raised, for the first time, before the Assistant Charity Commissioner in the year 1995, which has not found favour either with him or with the Joint Charity Commissioner and, rightly so, in the opinion of this Court.

6. Learned Assistant Judge committed an error in founding his verdict on the fact that the appellant does not fall in the line of descendants of Shri Devchandraji Maharaj. What ought to have been considered was that line of descendants in the Raj Mandir Branch of Devchandraji Maharaj, including female members. The fact remains that the respondent is not falling in that Branch. She herself is a daughter, who has been married and, as per Hindu mythology has entered into a different branch or Gotra, as is called and, as such, if that principle is to be adopted neither the respondent nor the appellant can continued to be trustee. Undisputedly, the appellant's grandmother, Manekbai, was female descendant in the Raj Mandir Branch of the Trust and, therefore, the order appointing the appellant as a trustee ought not to have been disturbed by the learned Assistant Judge.

7. It is contended that Manekbai was claiming ownership against the trust in the Inquiry proceedings, which had commenced following an application by Amritlal Jaikrishna and that she claimed the temple and the properties to be private properties. Be that, as it may, the fact remains that her contention came to be negatived and the trust came to be registered in the year 1968. The fact also remains that, by virtue of order passed in the year 1992, by the Joint Charity Commissioner, the Trust was without a trustee, though it was looked after

by Manekbai and Chandramaniben from 1968 to 1992 as de facto trustees. That order and observation has also attained finality as the same has not been challenged, up-till-now, and the contention of the learned Advocate for the respondent, therefore, cannot be accepted.

8. It would also be worth to note that, before the learned Assistant Judge, the Charity Commissioner's office was not made a party, as required under Section 56-B of the Bombay Public Trusts Act and the proceedings also, therefore, suffer from a technical defect and the finding, therefore, also cannot be upheld.

9. In view of the above discussion, the appeal deserves to be allowed and the same is allowed. The order impugned herein is hereby quashed and set aside and the orders passed by the Assistant Charity Commissioner and the Joint Charity Commissioner are confirmed. No costs.

10. In view of above order passed in the appeal, Civil Application No.1559 of 2003 would not survive. It shall stand disposed of accordingly.

[A. L. DAVE, J.]

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